

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.4870 OF 1997

with

SPECIAL CIVIL APPLICATION NO.2434 OF 1999

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

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KUSUMKAR V BHUNDIA

VERSUS

STATE OF GUJARAT

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Appearance:

MR IS SUPEHIA for Petitioner

None present for Respondent

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Coram: MR.JUSTICE S.K. Keshote,J

Date of order:23/06/99

C.A.V. JUDGMENT

#. Heard the learned counsel for the petitioner.

#. It is not in dispute that the petitioner, City Survey Superintendent in the Revenue Department, Government of Gujarat, was ordered to be removed from the services under the order of the disciplinary authority dated 30.11.83. This order has been passed after holding departmental inquiry. The petitioner has challenged that order of his removal from services in this Court by filing Special Civil Application No.5876 of 1983. This Special Civil Application was decided on 11.12.96. The order of removal of petitioner from services was set aside and the matter was sent back to disciplinary authority to pass fresh order after giving an opportunity of hearing to the petitioner and after furnishing the copies of two documents and giving him an opportunity of producing his defence. The respondent-State challenged this order passed in the Special Civil Application aforesaid by filing L.P.A. No.545 of 1998 which came to be dismissed on 24th August 1998. The petitioner attained the age of superannuation in the month of June 1995, i.e. before his Special Civil Application No.5876 of 1983 has been decided by this Court on 11.12.96. The petitioner, after this decision, made a request to the respondents that he may be taken to be on duty from the date of his removal to the date of attaining age of superannuation, i.e. 30th June 1995 and he be given all the benefits of salary, pension and all other retirementary benefits. The petitioner has made a representation and then a notice has also been given, but when nothing has been done, he filed Special Civil Application No.4870 of 1997 before this Court. In this Special Civil Application, notice was issued to the respondents on 9th September, 1997. Then on 17th November, 1997, this Special Civil application was admitted. As usual, the respondent-State of Gujarat and its functionaries have not cared to file reply to this Special Civil Application.

#. After filing of Special Civil Application No.4870 of 1997, the petitioner stated that he was ordered to be reinstated in the services by an order of respondent dated 18.11.98 and he was permitted to be retired from 30th June 1995. The respondent started to pay to the petitioner provisional pension at the rate of Rs.1275/= from the month of December 1998. The respondent, under the order dated 21.1.99, ordered for resuming of departmental inquiry against the petitioner. The petitioner objected it by filing protest vide his letter dated 25.1.99 and he prayed for dropping of the same.

Hence Special Civil Application No.2434 of 1999. This writ petition has not been admitted so far.

#. In the Special Civil Application N.4870 of 1997, the petitioner prayed for following reliefs:

(a) directing the respondent to treat the period from 30.11.1983 to 30.6.1995 as on duty for all purposes and to pay all benefits including full salary and to pay pension and gratuity from 30.6.95 all with 12% interest.

(b) during the pendency of this petition the respondent may be directed to pay monthly pension to the petitioner from 1.7.1997 onwards.

#. The prayers made by petitioner in the Special Civil Application No.4870 of 1997 are also in substance made in Special Civil Application no.2434 of 1999. In this later Special Civil Application, the petitioner has prayed for quashing of the order dated 21.1.99 for resuming of departmental inquiry.

#. In the Special Civil Application No.4870 of 1997, the petitioner filed Civil Application No.10052 of 1998. In this Civil Application, the Court has firstly passed the order which reads as under:

"The applicant had retired on 30.6.95. The grievance is that he is not even paid provisional pension. Mr.Pandya, learned A.G.P. wants to take instructions. Put up on 19.11.98. In the meantime the opponent shall pass appropriate orders in accordance with law with regard to the question of payment of provisional pension to the present applicant"

#. So it is not in dispute that under the order dated 3.3.99, the respondents started to pay provisional pension to the petitioner from the month of December 1998.

#. The learned counsel for the petitioner contended that Rule 189A of Bombay Civil Service Rules is clear on the point and the petitioner is entitled for full amount of pension, may be a provisional pension, as well as gratuity amount after retaining 10% gratuity amount or Rs.5,000/= whichever is less. He is also entitled for all retirementary benefits. It has next been contended that once the L.P.A. has been dismissed and the respondents have not taken care to proceed with the

inquiry, they have no right to resume the inquiry. The inquiry has to be dropped in the facts of this case and unnecessarily, the petitioner should not have been harassed.

#. Nobody is present on behalf of respondents in the first case to oppose the Special Civil Application. In the second Special Civil Application, notice has not been issued.

##. I have given my thoughtful considerations to the submissions made by learned counsel for the petitioner.

##. So far as the Special Civil Application No.4870 of 1997 is concerned, it is suffice to say that if we go by the prayers which have been made by petitioner in this Special Civil Application No.2434 of 1999, now these prayers are only duplication of the said prayers. Be that as it may, the first question which calls for consideration is whether the respondents were legally entitled to resume inquiry against the petitioner or not. The petitioner was ordered to be removed from services after holding departmental inquiry. It is true that this order has been set aside by this Court on 11.12.96 by an order passed in Special Civil Application No.5876 of 1983, but the petitioner was not exonerated. That order has been set aside only on the ground that this Court has found some defects in the inquiry, i.e. the disciplinary authority has not given opportunity of hearing to the petitioner and the copies of two documents and opportunity of producing defence and as such the matter has been remanded back. The judgment given by this Court has also been confirmed by the Division Bench in the L.P.A. The Division Bench, while disposing of the L.P.A., has observed in Civil Application:

"... We are also told that the authorities have not considered the matter afresh, even though the learned single judge of this Court directed that the matter should be decided afresh. The matter should have been considered afresh as directed by the learned single judge within a reasonable time..."

This decision has been given by the Division Bench on 24th August 1998. So the Division Bench has also directed the respondents to consider the matter afresh as directed by this court within a reasonable time. In view of the judgment of this Court in the Special Civil Application No.5876 of 1983 dated 11.12.96 and the Letters Patent Appeal dated 24th August 1998, the

respondents have no option except to consider the matter afresh. It is not the case where this Court has exonerated the petitioner. Merely because the respondents have not complied with the directions of this Court given in the Special Civil Application on 11.12.96, it does not mean that the petitioner stood exonerated or they now cannot proceed with the inquiry. In case the inquiry is dropped then certainly it will amount to disobedience of the order of this Court dated 11.12.96 which has been confirmed by the Division Bench under its order dated 24.8.98 and further the directions given therein. The order of the respondents to resume inquiry is perfectly legal and justified and in consonance with the directions which have been given by this Court. The respondents may not have resumed the inquiry as they filed L.P.A. against the judgment given in the Special Civil Application, but when this judgment has been confirmed, certainly they have no option except to carry out the directions given in the Special Civil Application. Challenge to the order of respondents dated 21.1.99 to resume inquiry is wholly devoid of any substance and unjustified. Inquiry would have to be completed within reasonable time by now but still it has not been completed. It is really shocking and speaks about sorry state of affairs prevailing in the State of Gujarat.

##. So far as the other claims of the petitioner regarding retirementary benefits are concerned, the respondents have already paid to the petitioner the provisional pension. As now the inquiry has to be completed within reasonable time, I do not consider it to be appropriate and fit to give directions to the respondents to give the petitioner, full pension as well as grant all other retirementary benefits. It is a matter of few months and on the conclusion of inquiry as per the decision given therein, appropriate orders will be passed by respondents.

##. In the result, both these Special Civil Applications fail and the same are dismissed. Rule is discharged in Special Civil Application No.4870 of 1997. However, the respondents are directed to complete the inquiry against the petitioner within a period of three months from the date of receipt of writ of this order. The disciplinary authority is to pass a fresh order in the matter after giving an opportunity of hearing to the petitioner, after furnishing copies of two documents and giving him opportunity of producing defence within a period of three months from the date of receipt of writ of this order. The petitioner is expected to give full cooperation in

the matter of inquiry and to make it convenient to the disciplinary authority to complete the inquiry within statutory period. It is made clear that in case the petitioner does not put appearance despite of notice, the disciplinary authority is at liberty and free to proceed ex parte against the petitioner. No order as to costs.

(S.K.Keshote, J.)

[sunil]